

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

APPLE CANYON UTILITY COMPANY,	§	
	§	Docket No. 12-0603
Proposed general increase	§	
in water rates.	§	

consolidated with

LAKE WILDWOOD UTILITIES CORPORATION,	§	
	§	Docket No. 12-0604
Proposed general increase	§	
in water rates.	§	

**JOINT REPLY BRIEF ON EXCEPTIONS FOR
LAKE WILDWOOD ASSOCIATION AND
APPLE CANYON LAKE PROPERTY OWNERS' ASSOCIATION**

Lake Wildwood Association (LWA) and Apple Canyon Lakes Property Owners' Association (ACLPOA) reply to the brief on exceptions by the Illinois Commerce (ICC or Commission) Staff (ICC Staff) and the joint brief on exceptions filed by Lake Wildwood Utilities, Inc. (LWU) and Apple Canyon Utility Company (ACUC) (collectively, Utilities).

I. The Proposed Order Correctly Disallows Pro Forma Plant Additions for LWU and ACUC.

The Proposed Order correctly disallows the recovery of two pro forma plant additions, one for LWU and one for ACUC. Both the ICC Staff and the Utilities excepted to the Proposed Order's finding disallowing certain upgrades to water treatment facilities at LWU and the addition of a new well pump for ACUC. Their exceptions should be denied.

Both the ICC Staff and the Utilities concede that the Utilities did not include these pro forma plant additions in their direct testimony as required by 83 Ill. Admin. Code Part 287. As the Proposed Order correctly notes, "the record shows that the Utilities knew that these projects

were going to be undertaken far in advance of the date for filing rebuttal testimony. The delay in notifying Staff and Intervenors is not explained.” Proposed Order at 19.

The record shows that LWU knew of the deficiencies in its piping and equipment at its water treatment building as early as August 2010 when the Illinois Environmental Protection Agency (IEPA) gave a notice to LWU of the deficiencies concerning its water treatment facility at Lake Wildwood. Utilities Ex. 2.3. As the Proposed Order observes, “despite knowing of this project for several years, the record shows that the Company moved at a glacial pace on this purportedly necessary project.” Proposed Order at 18. LWU neither started work on the project nor had the company even signed a contract for the project at the time of its rebuttal testimony in this docket. AG/ACLPOA/LWA Joint Ex. 2.0 at 8-9. The ICC Staff argument that the project was urgent and “necessary for the provision of safe, reliable water service” is belied by the nearly three-year lapse between the IEPA deficiency notice and any meaningful steps to rectify the deficiency. It appears the project became urgent only when LWU desired to increase its revenue requirement for this docket. The Proposed Order is correct in rejecting this last-minute attempt to boost the revenue requirement.

In a similar manner, ACUC waited until the due date for rebuttal testimony to notify the intervenors that the utility would be replacing its Well No. 1, thereby depriving the intervenors of the ability to conduct a full investigation of the proposed charge.

Contrary to the position of the ICC Staff that the “Utilities had nothing to gain by circumventing existing Commission Rules,” ICC Staff BOE at 2, the Utilities had everything to gain by not disclosing these projects until it was too late for full discovery by the intervenors. The Commission rules are designed to prevent utilities from gaming the system as both ACUC and LWU tried to do with their late pro forma adjustments.

The Utilities fail to explain in their BOE why they withheld these pro forma additions until the eve that rebuttal testimony from the intervenors was due. Instead, the Utilities argue—without any citation to the record—that they have a “small staff that is shared by numerous small companies located in 15 states,” so they should be excused from following the Commission’s rules. Utilities BOE at 5. The Proposed Order correctly rejects the Utilities’ threat “that if these pro forma adjustments are not granted, the Utilities will have to file new rate case sooner rather than later because of the large nature of the investments.” Proposed Order at 19-20. There are no facts in the record to support this threat. It was the Utilities’ decision to withhold the information on these pro forma adjustments, and the Utilities should not benefit from their attempt to circumvent the Commission’s rules.

The Commission should reject the ICC Staff and the Utilities’ proposed language and adopt the Proposed Order regarding these two pro forma adjustments.

II. The Proposed Order is Correct in Rejecting Costs for the Boundary Surveys and the Leak Detection Survey.

The Proposed Order correctly rejects the Utilities’ request to include boundary survey costs in rate base. The Proposed Order also correctly rejects ACUC’s request to include a leak detection survey in rate base. The Utilities’ exception requesting that these costs be included should not be granted because the expenses did not occur in the test year nor are the expenses for a specific capital expenditure.

ACUC conducted a boundary survey as part of its annexation of a new fire station and LWU conducted a boundary survey to incorporate several homes adjacent to its existing area. The annexations were approved by the Commission in Docket Nos. 10-0215 and 10-0224 respectively. The orders in those cases specifically state that neither ACUC nor LWU would incur any additional costs as a result of the boundary changes. As the Proposed Order correctly

finds, “the Commission found that no costs would be incurred and, thus, no recovery from ratepayers is appropriate.” Proposed Order at 13. The Utilities offer no record support for changing the Proposed Order, but rather argue that if they are not allowed to recover the costs, “both new and existing customers will be denied the benefits to be derived from the expansion of the utility’s service area and a larger customer base for sharing the fixed costs of the system.” Utilities BOE at 3. There is no explanation as to what benefits existing customers will be denied if the costs are not included in these dockets. The Utilities offer no valid explanation as to why the Commission should reverse its finding in Docket Nos. 10-0215 and 10-0224 that no costs would be incurred as a result of the new customers. The Proposed Order is correct in excluding the boundary survey costs.

ACUC performed the leak detection survey outside the test year. The Company did not identify any particular capital improvement that was made as a result of the leak survey. A leak survey in and of itself is not a capital project, and the costs of the survey should not be capitalized. AG/ACLPOA/LWA Joint Ex. 1.0 at 7. As ICC Staff Witness Theresa Ebrey explained, under the Uniform System of Accounts Accounting Instruction 19, only costs associated with construction work should be capitalized. Because the costs for the leak detection survey are not associated with specific construction costs, they are to be recorded as an expense. ICC Staff Ex. 8.0 at 4-5. The Proposed Order is correct that the leak survey costs should have been expensed in the year in which it occurred. Because the leak survey occurred outside the test year, the Proposed Order’s conclusion that the leak survey costs should not be capitalized is correct and should not be modified.

The Commission should accept the Proposed Order’s disallowance of the boundary survey and leak detection survey costs and reject the Utilities’ exception regarding these costs.

III. The Proposed Order Correctly Removes the Utilities' Expenses Associated with the Appeal of Their Last Rate Case from the Revenue Requirement.

The Proposed Order correctly removes from the Utilities' revenue requirement legal costs associated with the appeal of the Utilities' last rate case. The Utilities except to this finding arguing that, because the appeal was filed by the intervenors, customers should bear the full cost of the appeal. However, the Proposed Order correctly finds that LWU and ACUC did not present evidence to "support a finding that these are normal costs of doing business for these Utilities." Proposed Order at 28. In addition, the costs associated with the appeal are non-recurring. AG/ACLPOA/LWA Joint Ex. 2.0 at 19.

In consolidated Docket Nos. 09-0548 and 09-0459, which were the subject of the appeal, both LWU and ACUC accepted and agreed not to contest the ICC Staff's estimate of current and future rate case expenses. Proposed Order at 28. Having agreed to the level of current and future rate case expenses for the previous docket, the Utilities are inappropriately requesting to re-litigate this issue in an effort to recover more rate case expenses for the 2009 docket. *Id.* Because the costs associated with the appeal are not normal operating expenses and because the Utilities are seeking to recover more in rate case expenses than the Commission previously approved, the Proposed Order correctly rejects the Utilities' adjustment for appeals costs. The Commission likewise should reject the Utilities exception on this issue.

IV. The Proposed Order Correctly Finds It Is Inappropriate to Make Modifications in the Utilities' Rate Design.

The Proposed Order correctly finds that it would be inappropriate at this time to impose a major shift in existing rate structures until a rate design consolidation plan is completed. Rather than waiting for the previously ordered rate design consolidation plan to be completed, the ICC Staff erroneously wants major modifications in rate design to occur now with the strong

possibility that other major changes will come in the next rate case. The ICC Staff exception should be rejected as not sound public policy.

The requested increases by LWU and ACUC come less than three years after both utilities were granted significant increases by the Commission. These proposed increases, on top of the effective rate increases in the last cases of nearly 100 percent to some customers, leave the customers puzzled and dismayed, as reflected in the customers' comments at the public forum and on the Commission's website. Equity requires that rates be "based on public understandability of the reasonableness of the rate structure and level." 220 ILCS 5/1-102(d)(ii).

Both Lake Wildwood and Apple Canyon are small, rural residential communities that surround recreational lakes. Less than 50 percent of the lots in each community have been developed and have homes built on them. The other lots are vacant. The rate structure for these two utilities include one rate for customers who actually are connected to the system and receive water. Lot owners who are not physically connected to the system and receive no water service are billed at a different rate as "availability" customers. The ICC Staff's proposed cost of service study would significantly shift costs from the customers who are physically connected to the system and take service to lot owners who are not connected to the system and do not receive any water service. For example, the charge for LWU availability customers would increase 122 percent under the ICC Staff's proposal. As shown by the comments at the public forum, the Commission's website, and in testimony, the customers do not understand why the Commission considers it reasonable to significantly increase the charge to the availability customers who, lot owners perceive, receive no water service and hence no benefit from the utility systems.

Not only do customers not understand why rate design should change as the ICC Staff propose, but also the strong possibility exists for another significant change in rate design in the next rate case. This possibility exists for two reasons. First, Commission ordered the parent company of LWU and ACUC, Utilities, Inc. (UI), “to review and analyze UI’s current method of cost of service and rate design methodology” in order to develop a new cost of service for future UI rate cases. *Charmar Water Company et al* rate case, Docket Nos. 11-0561 through 11-0566, Final Order at 27, May 22, 2012. The review has neither been completed nor presented to LWA or ACLPOA for review and analysis. Second, as the Staff notes in its BOE, UI will be consolidating all of the operating company utilities in Illinois into one, new consolidated operating company. Docket No. 12-0297. How the consolidation will occur and how rates will be designed after the consolidation are unknown at this time because workshops on the rate design are ongoing. As with any consolidation, the new rates under a new rate design could either increase or decrease for customers of LWU and ACUC. In other words, the end result of the consolidation is currently not known. Because of the rate shock present in the ICC Staff’s proposal in these dockets and the strong potential that rate design will change significantly for these customers as a result of the planned company consolidation, it is sound ratemaking policy to defer redesigning rates until the consolidation process is complete, including a thorough review of the newly consolidated company-wide cost of service and rate design.

As a result, any significant shift of costs from customers using the system and receiving water service to lot owners who do not perceive they are receiving value from the utilities should not be made at this time. Therefore, the Proposed Order’s conclusion that “[t]he Commission is reluctant to impose such a large change to the Utilities’ rate design, in particular the shift to

availability customers, without knowing how that will ultimately change once the UI rate design process is complete,” Propose Order at 32, is prudent and appropriate and should be adopted.

V. Conclusion.

LWA and ACLPOA request that the Commission reject the proposed changes offered in the exceptions by the ICC Staff and the Utilities. LWA and ACLPOA additionally request that the Commission grant the exceptions to the Proposed Order contained in LWA and ACLPOA’s Brief on Exceptions.

___/Richard C. Balough/___

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For Apple Canyon Lake Property Owners’ Association and Lake Wildwood Association

CERTIFICATE OF SERVICE

I, Richard C. Balough, do hereby certify that a copy of the Reply Brief on Exceptions on Behalf of Lake Wildwood Association and Apple Canyon Lake Property Owners’ Association was sent via electronic mail to the parties on the Commission’s e-Docket service list on this 19th day of July 2013.

___/Richard C. Balough/___

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